

AMENDED IN ASSEMBLY AUGUST 20, 2007

AMENDED IN SENATE APRIL 25, 2007

AMENDED IN SENATE APRIL 9, 2007

AMENDED IN SENATE MARCH 26, 2007

SENATE BILL

No. 5

Introduced by Senator Machado

December 4, 2006

An act to amend Section 65584.04 of, and to add Sections 65302.7, 65405, 65860.1, 65962, and 66474.5 to, the Government Code, to add Section 50465 to the Health and Safety Code, ~~to add Section 21151.11 to the Public Resources Code,~~ and to amend Sections 8370 and 12878.1 of, and to add Article 8 (commencing with Section 8724) to Chapter 3 of Part 4 of Division 5 of, the Water Code, relating to flood management.

LEGISLATIVE COUNSEL'S DIGEST

SB 5, as amended, Machado. Flood management.

(1) The existing Disaster Preparedness and Flood Prevention Bond Act of 2006, approved by the voters at the November 7, 2006, statewide general election, authorizes the issuance and sale of bonds in the amount of \$4,090,000,000 for the purposes of financing disaster preparedness and flood prevention projects. That existing act requires the compilation of a state plan of flood control.

The Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006, approved by the voters at the November 7, 2006, statewide general election, authorizes the issuance and sale of bonds in the amount of \$5,388,000,000 to fund projects and expenditures relating to safe drinking water, water quality and supply, flood control, waterway and natural resource protection,

water pollution and contamination control, state and local park improvements, public access to natural resources, and water conservation efforts.

This bill would make legislative findings and declarations regarding the necessity of developing a comprehensive integrated flood policy and flood management program that addresses all aspects of flood management, clarifying the roles and responsibilities of the state, local flood management agencies, cities and counties, developers, and property owners as part of an integrated flood policy, *making flood risks more apparent*, and integrating the flood-related funding authorized by those bond acts with the integrated flood policy and flood management program.

This bill would require the department to develop by January 1, 2010, a cost-sharing formula, as needed, for funds made available by those bond acts for repairs or improvements of facilities of the plan described in (2) below to determine the local share of the cost of design and construction.

(2) The Department of Water Resources performs various flood control activities throughout the state. Existing law authorizes the Reclamation Board to engage in various flood control activities along the Sacramento River and San Joaquin River, their tributaries, and related areas.

~~This bill would require the department, on or before January 1, in years ending in 0 and 5, no later than January 1, 2013, to prepare the Sacramento-San Joaquin River Flood Management System Plan. The bill would require the board, on or before March 31, in years ending in 0 and 5, to adopt the plan no later than July 1, 2013. The plan would be required to be updated in years ending in 0 and 5.~~

The bill would require the plan to include specified components, including a description of the Sacramento-San Joaquin River Flood Management System, a description of the performance of the system and challenges to modifying the system to provide appropriate levels of flood protection, and findings and recommendations with regard to structural and nonstructural projects that, upon completion, will significantly reduce flood risks within the Sacramento and San Joaquin Rivers drainage. The department would be required to include in the plan evaluations of the methods for improving the performance of the system, the structural *and nonstructural* improvements necessary to bring each of the facilities of the State Plan of Flood Control for the Central Valley, as defined, to within its design standard, methods for

providing an urban level of flood protection, *as defined*, to urbanized areas, and methods for reducing flood risks in nonurbanized areas.

Upon the adoption of the plan by the board, specified facilities would be deemed to be part of the system and the board would be required to take action necessary to remove certain facilities from the State Plan of Flood Control for the Central Valley. The department would be required to prepare, and the board to adopt, a schedule of implementation for recommended actions *at the same time as the preparation and adoption of the plan*.

The bill would also require specified local governments, within ~~12~~ 24 months of the adoption of the plan by the board, to amend the general plan to include (A) the data and analysis contained in the plan, as specified, (B) goals, policies, and objectives based on the data and analysis contained in the plan, and (C) feasible implementation measures designed to carry out the goals, policies, and objectives, and would require the board, the department, and local flood agencies to collaborate with cities and counties by providing information, other technical assistance, and to develop funding mechanisms to finance local flood responsibilities, as specified. The bill would require each local government, as specified within ~~24~~ 36 months of the adoption of the plan by the board, to amend its zoning ordinance so that the zoning ordinance is consistent with the amendments to the general plan. The bill would also require local governments, within ~~24~~ 36 months of the adoption of the plan by the board, but not more than 12 months after the required amendment of the general plan, to identify each parcel of real property that is protected by specified flood management facilities, each parcel of real property that is located in a flood hazard ~~area~~ zone, *as defined*, and mail notice to the owner of those identified properties, as specified.

The bill would require specified local governments, after the required amendment to the general plan, *the amendment of the zoning ordinance, and the notification to property owners discussed above*, to deny approval for any ~~permit, use permit, conditional use permit, special use permit, building permit, or other entitlement~~ *discretionary permit or other discretionary entitlement for use, or any ministerial permit that would result in the construction of a new residence*, for use for a project that is located within an area protected by specified flood management facilities, or located within a flood control area, and to deny approval of a tentative map, or a parcel map, for any subdivision that is located within an area protected by specified flood management facilities, or

is located within a flood control area unless the local government makes certain findings. ~~The bill would also require local governments, after adoption of the plan by the board, to explicitly address flood risks in any environmental impact report, land evaluation and site assessment, negative declaration, mitigated negative declaration, or other environmental review documents filed pursuant to the California Environmental Quality Act, for projects located in an area protected by specified flood management facilities or located within a flood control area.~~ Each county would also be required, ~~by an unspecified date,~~ to collaborate with the cities within its jurisdiction to develop flood emergency plans *within 24 months of the adoption of the plan by the board.*

The imposition of the above requirements on specified local governments would impose a state-mandated local program.

(3) The Planning and Zoning Law requires at least 2 years prior to a scheduled revision of a local government's housing element that each council of governments, or delegate subregion, as applicable, develop a proposed methodology for distributing the existing and projected regional housing need to cities, counties, and cities and counties within the region or within the subregion, where applicable pursuant to specified provisions. That law requires that the methodology be consistent with specified objectives that include, among other things, a determination of the availability of land suitable for urban development or for conversion to residential use, the availability of underutilized land, and opportunities for infill development and increased residential densities.

The bill would provide that the determination of available land suitable for urban development may exclude lands where the flood management infrastructure designed to protect the jurisdiction is not adequate to avoid the risk of flooding such that the development of housing would be impractical due to cost or other considerations.

(4) Existing law requires the California Building Standards Commission to receive proposed building standards from state agencies for consideration in an annual code adoption cycle, as specified.

This bill would require the Department of Housing and Community Development, in consultation with the Office of the State Architect, the State Fire Marshal, the State Reclamation Board, and the Department of Water Resources, by January 1, 2009, to *consider whether to propose to the California Building Standards Commission for adoption and approval, amendments updated requirements* to the California Building

Standards Code, that apply to construction ~~that is located in an area protected by flood management facilities, or located within a flood area facilities of the Sacramento-San Joaquin River Flood Management System Plan, as specified.~~

(5) *Existing law provides that the Department of Water Resources has supervisory powers over the maintenance and operation of the flood control works of the Sacramento River Flood Control Project.*

This bill would impose duties upon the department in connection with the maintenance and operation of certain works of this project.

This bill would require local agencies, except as provided, as a condition of accepting certain funds, to agree to provide the department an operations and maintenance plan that puts forth their responsibilities in connection with the Sacramento River Flood Control Project, as provided.

~~(5)–~~

(6) The bill would make legislative findings and declarations that flood protection in the Sacramento and San Joaquin Rivers drainage areas is a matter of statewide concern.

~~(6)–~~

(7) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) To successfully improve state flood policy and reduce flood
4 risks, it is necessary to develop a comprehensive integrated flood
5 policy and flood management program that addresses all aspects
6 of flood management.

7 (b) Further, as part of an integrated flood policy, it is necessary
8 to clarify the roles and responsibilities of the state, local flood

1 management agencies, cities and counties, and developers and
2 other property owners.

3 *(c) Linking land use decisions to flood risk and flood protection*
4 *estimates comprises only one element of improving lives and*
5 *property in the central valley. Federal, state, and local agencies*
6 *may construct and operate flood protection facilities to reduce*
7 *flood risks, but flood risks will nevertheless remain for those who*
8 *choose to reside in central valley floodplains. Making those flood*
9 *risks more apparent will help ensure that Californians make careful*
10 *choices when deciding whether to build homes or live in central*
11 *valley floodplains, and if so, whether to prepare for flooding or*
12 *maintain flood insurance.*

13 ~~(e)~~

14 *(d) It is also necessary to integrate the flood-related funding*
15 *authorized by the Disaster Preparedness and Flood Prevention*
16 *Bond Act of 2006 (Chapter 1.699 (commencing with Section*
17 *5096.800) of Division 5 of the Public Resources Code) and the*
18 *Safe Drinking Water, Water Quality and Supply, Flood Control,*
19 *River and Coastal Protection Bond Act of 2006 (Division 43*
20 *(commencing with Section 75001) of the Public Resources Code)*
21 *with the integrated flood policy and flood management program.*
22 *As part of this integration of policy with financing, it is important*
23 *that cost-sharing rules for flooding be consistent statewide.*

24 ~~(d) In expending the bond funds, the priority should be to protect~~
25 ~~current populations, public safety, and public safety infrastructure.~~

26 ~~(e) Many urban populations have an inadequate level of flood~~
27 ~~protection. At the 4th Biennial CALFED Science Conference 2006,~~
28 ~~credible evidence was presented suggesting that a 500-year level~~
29 ~~of flood protection is the minimum level of protection that should~~
30 ~~be considered for urbanized areas.~~

31 ~~(f) The integrated strategy for improving the level of flood~~
32 ~~protection should include changes in land use and land use~~
33 ~~planning. Changes in land use planning requirements should begin~~
34 ~~as soon as practicable. The start date for these changes will be~~
35 ~~dependent upon a number of events, including, but not limited to,~~
36 ~~all of the following:~~

37 ~~(1) When new flood risk maps are available.~~

38 ~~(2) When the Department of Water Resources and the~~
39 ~~Reclamation Board have completed their assessments of the current~~
40 ~~performance of state flood control.~~

1 ~~(3) When the Department of Water Resources and the~~
2 ~~Reclamation Board have amended the state plan of flood control~~
3 ~~to add or remove facilities.~~

4 ~~(4) When the Department of Water Resources and the~~
5 ~~Reclamation Board have identified and adopted a schedule for~~
6 ~~implementing structural and nonstructural improvements to the~~
7 ~~state plan of flood control that improve the operation of the system~~
8 ~~and reduce flood risk systemwide.~~

9 ~~(5) When the Department of Water Resources, local flood~~
10 ~~management agencies, and cities and counties have identified and~~
11 ~~adopted a schedule for implementing structural and nonstructural~~
12 ~~improvements to the state plan of flood control that improve the~~
13 ~~operation of the system and reduce flood risk systemwide.~~

14 SEC. 2. Section 65302.7 is added to the Government Code, to
15 read:

16 65302.7. (a) Within ~~12~~ 24 months of the adoption of the
17 Sacramento-San Joaquin River Flood Management System Plan
18 by the State Reclamation Board pursuant to Article 8 (commencing
19 with Section 8724) of Chapter 3 of Part 4 of Division 5 of the
20 Water Code, each city or county included in the system, pursuant
21 to Section 8727 of the Water Code, shall amend its general plan
22 to contain the following:

23 (1) The data and analysis contained in the Sacramento-San
24 Joaquin River Flood Management System Plan, including, but not
25 limited to, the locations of the facilities of the State Plan of Flood
26 Control for the Central Valley, the locations of other flood
27 management facilities, the locations of the real property protected
28 by those facilities, and the locations of flood hazard ~~areas~~ zones.

29 (2) Goals, policies, and objectives, based on the data and
30 analysis identified pursuant to paragraph (1), for the protection of
31 lives and property from the unreasonable risks of flooding.

32 (3) Feasible implementation measures designed to carry out the
33 goals, policies, and objectives established pursuant to paragraph
34 (2).

35 (b) To assist each city or county in complying with this section,
36 the ~~State~~ Reclamation Board, the ~~State~~ Department of Water
37 Resources, and local flood agencies shall collaborate with cities
38 or counties by providing them with information and other technical
39 assistance.

(c) In implementing this section, each city and county, both general law and charter, included in the system, pursuant to Section 8727 of the Water Code, shall comply with this article, including, but not limited to, Sections 65300.5, 65300.7, 65300.9, and 65301.

(d) Notwithstanding any other provision of law, this section applies to all cities, including charter cities, and counties included in the system, pursuant to Section 8727 of the Water Code. The Legislature finds and declares that flood protection in the Sacramento and San Joaquin Rivers drainage areas is a matter of statewide concern and not a municipal affair as that term is used in Section 5 of Article XI of the California Constitution.

(e) *For the purposes of this section, “flood hazard zone” means an area subject to flooding that is delineated as either a special hazard area or an area of moderate or minimal hazard on an official flood insurance rate map issued by the Federal Emergency Management Agency or an area identified by the Department of Water Resources in the Sacramento-San Joaquin River Flood Management System Plan as an area of statewide interest. The identification of a flood hazard zone does not imply that areas outside the flood hazard zones, or uses permitted within flood hazard zones, will be free from flooding or flood damage.*

SEC. 3. Section 65405 is added to the Government Code, to read:

65405. (a) Within 36 months of the adoption of the Sacramento-San Joaquin River Flood Management System Plan by the State Reclamation Board pursuant to Article 8 (commencing with Section 8724) of Chapter 3 of Part 4 of Division 5 of the Water Code, but not more than 12 months after the amendment of its general plan pursuant to Section 65302.7, each city or county included in the system, pursuant to Section 8727 of the Water Code, shall do all of the following:

(1) Identify each parcel of real property that is protected by the facilities of the State Plan of Flood Control for the Central Valley or other flood management facilities.

(2) Identify each parcel of real property that is located in a flood hazard area zone, as defined in subdivision (e) of Section 65302.7.

(3) Mail a notice to the owner of each parcel of real property identified pursuant to paragraphs (1) and (2).

(b) The notice mailed pursuant to subdivision (a) shall state all of the following:

1 (1) Whether a parcel is protected by the facilities of the State
2 Plan of Flood Control for the Central Valley or other flood
3 management facilities, or whether the parcel is located in a flood
4 hazard ~~area~~ zone, as defined in subdivision (e) of Section 65302.7.

5 (2) The degree of flood protection, if known.

6 (3) How the owner can obtain more information about flood
7 protection.

8 (4) How the owner can obtain flood insurance.

9 (5) The consequences of failing to have flood insurance in the
10 event of a flood.

11 (c) If the number of owners to whom notice would be mailed
12 pursuant to this section is greater than 1,000, a city or county may
13 instead provide notice by placing a display advertisement of at
14 least one-eighth page in at least one newspaper of general
15 circulation within the city or county.

16 (d) In addition to the notice required by this section, a city or
17 county may give notice by any other means it deems necessary or
18 desirable.

19 (e) Notwithstanding any other provision of law, this section
20 applies to all cities, including charter cities, and counties included
21 in the system, pursuant to Section 8727 of the Water Code. The
22 Legislature finds and declares that flood protection in the
23 Sacramento and San Joaquin Rivers drainage areas is a matter of
24 statewide concern and not a municipal affair as that term is used
25 in Section 5 of Article XI of the California Constitution.

26 SEC. 4. Section 65584.04 of the Government Code is amended
27 to read:

28 65584.04. (a) At least two years prior to a scheduled revision
29 required by Section 65588, each council of governments, or
30 delegate subregion as applicable, shall develop a proposed
31 methodology for distributing the existing and projected regional
32 housing need to cities, counties, and cities and counties within the
33 region or within the subregion, where applicable pursuant to this
34 section. The methodology shall be consistent with the objectives
35 listed in subdivision (d) of Section 65584.

36 (b) (1) No more than six months prior to the development of a
37 proposed methodology for distributing the existing and projected
38 housing need, each council of governments shall survey each of
39 its member jurisdictions to request, at a minimum, information
40 regarding the factors listed in subdivision (d) that will allow the

1 development of a methodology based upon the factors established
2 in subdivision (d).

3 (2) The council of governments shall seek to obtain the
4 information in a manner and format that is comparable throughout
5 the region and utilize readily available data to the extent possible.

6 (3) The information provided by a local government pursuant
7 to this section shall be used, to the extent possible, by the council
8 of governments, or delegate subregion as applicable, as source
9 information for the methodology developed pursuant to this section.

10 The survey shall state that none of the information received may
11 be used as a basis for reducing the total housing need established
12 for the region pursuant to Section 65584.01.

13 (4) If the council of governments fails to conduct a survey
14 pursuant to this subdivision, a city, county, or city and county may
15 submit information related to the items listed in subdivision (d)
16 prior to the public comment period provided for in subdivision
17 (c).

18 (c) Public participation and access shall be required in the
19 development of the methodology and in the process of drafting
20 and adoption of the allocation of the regional housing needs.
21 Participation by organizations other than local jurisdictions and
22 councils of governments shall be solicited in a diligent effort to
23 achieve public participation of all economic segments of the
24 community. The proposed methodology, along with any relevant
25 underlying data and assumptions, and an explanation of how
26 information about local government conditions gathered pursuant
27 to subdivision (b) has been used to develop the proposed
28 methodology, and how each of the factors listed in subdivision (d)
29 is incorporated into the methodology, shall be distributed to all
30 cities, counties, any subregions, and members of the public who
31 have made a written request for the proposed methodology. The
32 council of governments, or delegate subregion, as applicable, shall
33 conduct at least one public hearing to receive oral and written
34 comments on the proposed methodology.

35 (d) To the extent that sufficient data is available from local
36 governments pursuant to subdivision (b) or other sources, each
37 council of governments, or delegate subregion as applicable, shall
38 include the following factors to develop the methodology that
39 allocates regional housing needs:

1 (1) Each member jurisdiction's existing and projected jobs and
2 housing relationship.

3 (2) The opportunities and constraints to development of
4 additional housing in each member jurisdiction, including all of
5 the following:

6 (A) Lack of capacity for sewer or water service due to federal
7 or state laws, regulations or regulatory actions, or supply and
8 distribution decisions made by a sewer or water service provider
9 other than the local jurisdiction that preclude the jurisdiction from
10 providing necessary infrastructure for additional development
11 during the planning period.

12 (B) The availability of land suitable for urban development or
13 for conversion to residential use, the availability of underutilized
14 land, and opportunities for infill development and increased
15 residential densities. The council of governments may not limit
16 its consideration of suitable housing sites or land suitable for urban
17 development to existing zoning ordinances and land use restrictions
18 of a locality, but shall consider the potential for increased
19 residential development under alternative zoning ordinances and
20 land use restrictions. The determination of available land suitable
21 for urban development may exclude lands where the flood
22 management infrastructure designed to protect that land is not
23 adequate to avoid the risk of flooding such that the development
24 of housing on that land would be infeasible because of cost or
25 other considerations. Information from the Reclamation Board,
26 the Army Corps of Engineers, or other sources may be used to
27 support determinations made pursuant to this subparagraph.

28 (C) Lands preserved or protected from urban development under
29 existing federal or state programs, or both, designed to protect
30 open space, farmland, environmental habitats, and natural resources
31 on a long-term basis.

32 (D) County policies to preserve prime agricultural land, as
33 defined pursuant to Section 56064, within an unincorporated area.

34 (3) The distribution of household growth assumed for purposes
35 of a comparable period of regional transportation plans and
36 opportunities to maximize the use of public transportation and
37 existing transportation infrastructure.

38 (4) The market demand for housing.

39 (5) Agreements between a county and cities in a county to direct
40 growth toward incorporated areas of the county.

(6) The loss of units contained in assisted housing developments, as defined in paragraph (8) of subdivision (a) of Section 65583, that changed to non-low-income use through mortgage prepayment, subsidy contract expirations, or termination of use restrictions.

(7) High-housing costs burdens.

(8) The housing needs of farmworkers.

(9) The housing needs generated by the presence of a private university or a campus of the California State University or the University of California within any member jurisdiction.

(10) Any other factors adopted by the council of governments.

(e) The council of governments, or delegate subregion, as applicable, shall explain in writing how each of the factors described in subdivision (d) was incorporated into the methodology and how the methodology is consistent with subdivision (d) of Section 65584. The methodology may include numerical weighting.

(f) Any ordinance, policy, voter-approved measure, or standard of a city or county that directly or indirectly limits the number of residential building permits issued by a city or county shall not be a justification for a determination or a reduction in the share of a city or county of the regional housing need.

(g) In addition to the factors identified pursuant to subdivision (d), the council of governments, or delegate subregion, as applicable, shall identify any existing local, regional, or state incentives, such as a priority for funding or other incentives available to those local governments that are willing to accept a higher share than proposed in the draft allocation to those local governments by the council of governments or delegate subregion pursuant to Section 65584.05.

(h) Following the conclusion of the 60-day public comment period described in subdivision (c) on the proposed allocation methodology, and after making any revisions deemed appropriate by the council of governments, or delegate subregion, as applicable, as a result of comments received during the public comment period, each council of governments, or delegate subregion, as applicable, shall adopt a final regional, or subregional, housing need allocation methodology and provide notice of the adoption of the methodology to the jurisdictions within the region, or delegate subregion as applicable, and to the department.

SEC. 5. Section 65860.1 is added to the Government Code, to read:

65860.1. (a) Within 36 months of the adoption of the Sacramento-San Joaquin River Flood Management System Plan by the State Reclamation Board pursuant to Article 8 (commencing with Section 8724) of Chapter 3 of Part 4 of Division 5 of the Water Code, but not more than 12 months after the amendment of its general plan pursuant to Section 65302.7, each city or county shall amend its zoning ordinance so that it is consistent with the general plan as amended.

(b) Notwithstanding any other provision of law, this section applies to all cities, including charter cities and counties included in the plan, pursuant to Section 8727 of the Water Code. The Legislature finds and declares that flood protection in the Sacramento and San Joaquin Rivers drainage areas is a matter of statewide concern and not a municipal affair as that term is used in Section 5 of Article XI of the California Constitution.

SEC. 6. Section 65962 is added to the Government Code, to read:

65962. Notwithstanding any other provision of law, after a city or county amends its general plan pursuant to Section 65302.7, the city or county shall not approve any permit, use permit, conditional use permit, special use permit, building permit, or any other entitlement for use, whether discretionary or ministerial, for the amendments required by Sections 65302.7 and 65860.1 have become effective, and the city or county provides notification pursuant to Section 65405, the city or county shall not approve any discretionary permit or other discretionary entitlement for use, or any ministerial permit that would result in the construction of a new residence, for a project that is located within an area protected by the facilities of the State Plan of Flood Control for the Central Valley or other flood management facilities, or located within a flood control area unless the city or county finds, based on substantial evidence in the record, one of the following:

(a) The facilities of the State Plan of Flood Control for the Central Valley or other flood management facilities protect the project from the unreasonable risks of flooding.

(b) The city or county has imposed conditions on the permit that will protect the project from the unreasonable risks of flooding. These conditions may include, but are not limited to, building standards and other mitigation measures.

1 (c) (1) *The local agency that is responsible for flood protection*
2 *in the area has made adequate progress on the construction of a*
3 *flood protection system that will reduce the risk of flooding for*
4 *property located within a flood hazard zone, as defined in*
5 *subdivision (e) of Section 65302.7, intended to be protected by the*
6 *system.*

7 (2) *For the purposes of this subdivision, “adequate progress”*
8 *means that the local agency has provided information to the*
9 *Department of Water Resources and the Reclamation Board, to*
10 *demonstrate all of the following:*

11 (A) *The total project scope, schedule, and cost of the completed*
12 *flood protection system has been identified.*

13 (B) *At least 10 percent of the total financial project cost of the*
14 *completed flood protection system has been appropriated and is*
15 *currently being expended.*

16 (C) *Critical features of the flood protection system are under*
17 *construction and each critical feature is progressing, as indicated*
18 *by the actual expenditure of the construction budget funds.*

19 (D) *The local agency has not been responsible for any*
20 *significant delay in the completion of the system.*

21 (3) *The local agency shall annually report to the board on its*
22 *efforts in working toward completion of the flood protection system.*

23 SEC. 7. Section 66474.5 is added to the Government Code, to
24 read:

25 66474.5. Notwithstanding any other provision of law, after the
26 adoption of the Sacramento-San Joaquin River Flood Management
27 System Plan by the ~~State~~ Reclamation Board pursuant to Article
28 8 (commencing with Section 8724) of Chapter 3 of Part 4 of
29 Division 5 of the Water Code, *after the amendments required by*
30 *Sections 65302.7 and 65860.1 have become effective, and after*
31 *the city or county provides notification pursuant to Section 65405,*
32 *the legislative body of a city or county included in the plan,*
33 *pursuant to Section 8727 of the Water Code, shall deny approval*
34 *of a tentative map, or a parcel map for which a tentative map was*
35 *not required, for any subdivision that is located within an area*
36 *protected by the facilities of the State Plan of Flood Control for*
37 *the Central Valley or other flood management facilities, or located*
38 *within a flood control area unless the city or county finds, based*
39 *on substantial evidence in the record, one of the following:*

1 (a) The facilities of the State Plan of Flood Control for the
2 Central Valley or other flood management facilities protect the
3 subdivision from the unreasonable risks of flooding.

4 (b) The city or county has imposed conditions on the subdivision
5 that will protect the subdivision from the unreasonable risks of
6 flooding. These conditions may include, but are not limited to,
7 building standards and other mitigation measures.

8 (c) (1) *The local agency that is responsible for flood protection*
9 *in the area has made adequate progress on the construction of a*
10 *flood protection system which will reduce the risk of flooding for*
11 *property located within a flood hazard zone, as defined in*
12 *subdivision (e) of Section 65302.7, intended to be protected by the*
13 *system.*

14 (2) *For the purposes of this subdivision, “adequate progress”*
15 *means that the local agency has provided information to the*
16 *Department of Water Resources and the Reclamation Board, to*
17 *demonstrate all of the following:*

18 (A) *The total project scope, schedule, and cost of the completed*
19 *flood protection system has been identified.*

20 (B) *At least 10 percent of the total financial project cost of the*
21 *completed flood protection system has been appropriated and is*
22 *currently being expended.*

23 (C) *Critical features of the flood protection system are under*
24 *construction and each critical feature is progressing, as indicated*
25 *by the actual expenditure of the construction budget funds.*

26 (D) *The local agency has not been responsible for any*
27 *significant delay in the completion of the system.*

28 (3) *The local agency shall annually report to the board on its*
29 *efforts in working toward completion of the flood protection system.*

30 SEC. 8. Section 50465 is added to the Health and Safety Code,
31 to read:

32 50465. (a) On or before January 1, 2009, the department shall
33 ~~propose to the California Building Standards Commission, pursuant~~
34 ~~to Part 2.5 (commencing with Section 18901), amendments to the~~
35 ~~California Building Standards Code that apply to construction that~~
36 ~~is located in an area protected by the facilities of the State Plan of~~
37 ~~Flood Control for the Central Valley or other flood management~~
38 ~~facilities, or located within a flood control area. The consider~~
39 ~~whether to propose to the Building Standards Commission for~~
40 ~~adoption and approval updated requirements to the California~~

1 *Building Standards Code that apply to construction in an area*
2 *protected by the facilities of the Sacramento-San Joaquin River*
3 *Flood Management System Plan where flood levels are anticipated*
4 *to exceed three feet for the 100-year flood event. Any amendments*
5 *to the California Building Standards Code shall be sufficient to*
6 *protect the construction in those areas from the unreasonable risks*
7 *of flooding.*

8 (b) Before the department proposes the amendments to the
9 California Building Standards Code—required pursuant to
10 subdivision (a), the department shall consult with the—State
11 Reclamation Board, the State Department of Water Resources, the
12 Office of the State Architect, and the State Fire Marshal.

13 ~~SEC. 9. Section 21151.11 is added to the Public Resources~~
14 ~~Code, to read:~~

15 ~~21151.11. After the adoption of the Sacramento-San Joaquin~~
16 ~~River Flood Management System Plan by the State Reclamation~~
17 ~~Board pursuant to Article 8 (commencing with Section 8724) of~~
18 ~~Chapter 3 of Part 4 of Division 5 of the Water Code, if a project~~
19 ~~is located in an area protected by the facilities of the State Plan of~~
20 ~~Flood Control for the Central Valley or other flood management~~
21 ~~facilities, or located within a flood control area, the city or county~~
22 ~~shall explicitly address flood risks in any environmental impact~~
23 ~~report, land evaluation and site assessment, negative declaration,~~
24 ~~mitigated negative declaration, or other environmental review~~
25 ~~documents.~~

26 *SEC. 9. Section 8370 of the Water Code is amended to read:*

27 8370. (a) It is the responsibility, liability, and duty of the
28 reclamation districts, levee districts, protection districts, drainage
29 districts, municipalities, and other public agencies within the
30 Sacramento River Flood Control Project limits, to maintain and
31 operate the works of the project within the boundaries or
32 jurisdiction of—such these agencies, excepting only those works
33 enumerated in Section 8361 and those for which provision for
34 maintenance and operation is made by—Federal federal law. *The*
35 *department shall be responsible for evaluating the maintenance*
36 *and operation of these works of the project.*

37 (b) *A local agency that provides assurances to maintain and*
38 *operate works of the project shall maintain and operate the works*
39 *within the boundaries or jurisdiction of the agency, excepting only*
40 *those works enumerated in Section 8361 and those for which*

1 *provision for maintenance and operation is made by federal law.*
2 *A local agency, except for local agencies participating in the Delta*
3 *Levee Maintenance Subvention Program, as a condition of*
4 *accepting funds authorized by the Legislature as part of the annual*
5 *Bond Expenditure Disaster Preparedness and Flood Prevention*
6 *Plan required pursuant to paragraph (3) of subdivision (b) of*
7 *Section 5096.820, shall agree to provide the department an*
8 *operations and maintenance plan that sets forth local agency areas*
9 *of responsibility.*

10 *(c) The department shall be responsible for all of the following:*

11 *(1) Establishing maintenance standards for works of the project,*
12 *including, but not limited to, standards and responsibilities for*
13 *erosion sites. The department shall develop and adopt these*
14 *standards through a public process.*

15 *(2) Ensuring that local levee maintenance districts perform*
16 *adequate maintenance by annually evaluating the adequacy of the*
17 *maintenance activities for each area.*

18 *(3) Establishing maintenance areas pursuant to Chapter 4.5*
19 *(commencing with Section 12878) of Part 6 of Division 6 where*
20 *local levee maintenance districts are not performing their*
21 *maintenance activities appropriately. The department shall*
22 *establish criteria for determining if a local levee maintenance*
23 *district is not performing adequately. The department shall develop*
24 *and adopt these standards through a public process.*

25 SEC. 10. Article 8 (commencing with Section 8724) is added
26 to Chapter 3 of Part 4 of Division 5 of the Water Code, to read:

27
28 Article 8. Sacramento-San Joaquin River Flood Management
29 System
30

31 8724. Unless the context requires otherwise, the definitions
32 set forth in this section govern the construction of this article.

33 (a) “Plan” means the Sacramento-San Joaquin River Flood
34 Management System Plan.

35 (b) “State Plan of Flood Control for the Central Valley” has the
36 ~~meaning~~ *same meaning as the “State Plan of Flood Control”* set
37 forth in subdivision (j) of Section 5096.805 of the Public Resources
38 Code.

39 (c) “System” means the Sacramento-San Joaquin River Flood
40 Management System described in Section 8725.

1 8725. The Sacramento-San Joaquin River Flood Management
2 System comprises all of the following:

3 (a) The facilities of the State Plan of Flood Control for the
4 Central Valley as that plan may be amended pursuant to this article.

5 (b) Any existing dam, levee, or other flood management facility
6 that is not part of the State Plan of Flood Control for the Central
7 Valley that the board determines, pursuant to this article, does one
8 or more of the following:

9 (1) Provides significant systemwide benefits for managing flood
10 risks within the Sacramento and San Joaquin Rivers drainage.

11 (2) Protects urban areas within the Sacramento and San Joaquin
12 Rivers drainage.

13 (c) Structural and nonstructural projects that are adopted by the
14 board pursuant to this article and designed to reduce flood risks
15 within the Sacramento and San Joaquin Rivers drainage.

16 8725.5. (a) ~~The department shall prepare, and the board shall~~
17 ~~adopt, No later than January 1, 2013, the department shall prepare~~
18 ~~the Sacramento-San Joaquin River Flood Management System~~
19 ~~Plan in accordance with this article, and shall send the plan to the~~
20 ~~board, who shall adopt the plan no later than July 1, 2013.~~

21 ~~(b) On or before January 1, in years ending in 0 and 5, the~~
22 ~~department shall submit the proposed plan to the board.~~

23 ~~(b) The plan shall be updated in years ending in 0 or 5.~~

24 (c) The board shall hold at least two hearings to receive
25 comments on the proposed plan. At least one hearing shall be held
26 in the Sacramento Valley and at least one hearing shall be held in
27 the San Joaquin Valley. The board shall also accept comments in
28 writing with regard to the proposed plan.

29 (d) The board may make changes to the proposed plan to resolve
30 issues raised in the hearings or to respond to comments received
31 by the board. The board shall publish its proposed changes to the
32 proposed plan at least two weeks before adopting the plan.

33 ~~(e) On or before March 31, in years ending in 0 and 5, the board~~
34 ~~shall adopt the plan.~~

35 8726. The department or the board may appoint one or more
36 advisory committees to assist in the preparation of the plan. *If the*
37 *department or the board appoints one or more advisory*
38 *committees, the advisory committee or committees shall include*
39 *representation by interested organizations.*

40 8727. The plan shall include all of the following:

1 (a) A description of the Sacramento-San Joaquin River Flood
2 Management System and the cities and counties included in the
3 system.

4 (b) A description of the performance of the system and the
5 challenges to modifying the system to provide appropriate levels
6 of flood protection, and findings and recommendations with regard
7 to structural and nonstructural projects that, upon completion, will
8 significantly reduce flood risks within the Sacramento and San
9 Joaquin Rivers drainage.

10 (c) A description of the facilities of the State Plan of Flood
11 Control for the Central Valley, including all of the following:

12 (1) The precise location and a brief description of each facility,
13 a description of the population and property protected by the
14 facility, the system benefits provided by the facility, if any, and a
15 brief history of the facility, including the year of construction,
16 major improvements to the facility, and any failures of the facility.

17 (2) The design performance of each facility.

18 (3) A description and evaluation of the performance of each
19 facility, including the following:

20 (A) An evaluation of failure risks due to each of the following:

21 (i) Overtopping.

22 (ii) Under seepage.

23 (iii) Structural failure.

24 (iv) Seismic events.

25 (v) Other sources of risk that the department or the board
26 determines are applicable.

27 (B) A description of any uncertainties regarding performance
28 capability, including uncertainties arising from the need for
29 additional engineering evaluations or uncertainties arising from
30 changed conditions such as changes in estimated channel
31 capacities.

32 (d) A description of each existing dam that is not part of the
33 State Plan of Flood Control for the Central Valley that provides
34 either significant systemwide benefits for managing flood risks
35 within the Sacramento and San Joaquin Rivers drainage or protects
36 urban areas within the Sacramento and San Joaquin Rivers
37 drainage, including all of the following information:

38 (1) The precise location and a brief description of each facility,
39 a description of the population and property protected by the
40 facility, and a brief history of the facility, including the year of

1 construction, major improvements to the facility, and any
2 uncontrolled releases of the facility.

3 (2) The standard project flood event upon which the flood
4 operation rules were based.

5 (3) A description of downstream conditions upon which the
6 flood operation rules were based, including estimated channel
7 capacities, level of urban development, and other conditions that
8 the department or the board determines to be relevant.

9 (4) A description of changes in downstream conditions since
10 the flood operation rules were established.

11 (e) A description of each existing levee and other flood
12 management facility not described in subdivision (d) that is not
13 part of the State Plan of Flood Control for the Central Valley that
14 provides either significant systemwide benefits for managing flood
15 risks within the Sacramento and San Joaquin Rivers drainage or
16 protects urban areas within the Sacramento and San Joaquin Rivers
17 drainage, including all of the following:

18 (1) The precise location and a brief description of each facility,
19 a description of the population and property protected by the
20 facility, the system benefits provided by the facility, if any, and a
21 brief history of the facility, including the year of construction,
22 major improvements to the facility, and any failures of the facility.

23 (2) The design performance of each facility.

24 (3) A description and evaluation of the performance of each
25 facility, including the following:

26 (A) An evaluation of failure risks due to each of the following:

27 (i) Overtopping.

28 (ii) Under seepage.

29 (iii) Structural failure.

30 (iv) Seismic events.

31 (v) Other sources of risk that the department or the board
32 determines are applicable.

33 (B) A description of any uncertainties regarding performance
34 capability, including uncertainties arising from the need for
35 additional engineering evaluations or uncertainties arising from
36 changed conditions such as changes in estimated channel
37 capacities.

38 (f) A description of the probable impacts of projected climate
39 change *based on the best available science*, projected land use

1 patterns, and other potential flood management challenges on the
2 ability of the system to provide adequate levels of flood protection.

3 (g) An evaluation of both structural and nonstructural methods
4 for improving systemwide performance of the system. The
5 evaluation shall include a prioritized list of recommended actions
6 necessary to improve the performance of the system.

7 (h) An evaluation of the structural *and nonstructural*
8 improvements necessary to bring each of the facilities of the State
9 Plan of Flood Control for the Central Valley to within its design
10 standard.

11 (1) The evaluation shall include a prioritized list of
12 recommended actions necessary to bring each facility not identified
13 in paragraph (2) to within its design standard.

14 (2) The evaluation shall include a list of facilities recommended
15 to be removed from the State Plan of Flood Control for the Central
16 Valley. For each facility recommended for removal, the evaluation
17 shall identify both of the following:

18 (A) The reasons for proposing the removal of the facility from
19 the State Plan of Flood Control for the Central Valley.

20 (B) Any additional recommended actions associated with
21 removing the facility from the State Plan of Flood Control for the
22 Central Valley.

23 (i) (1) An evaluation of both structural and nonstructural
24 methods for providing an urban level of flood protection to
25 currently urbanized areas. The evaluation shall include a prioritized
26 list of recommended actions to improve urban flood protection.

27 (2) For purposes of this subdivision, “urban level of flood
28 protection” means that level of protection necessary to protect
29 against both of the following:

30 ~~(A) A “_____ flood,” which means a hypothetical flood~~
31 ~~representing _____.~~

32 ~~(B) A _____ percent probability of flooding in any one year.~~
33 *a 200-year flood standard. For the purposes of this paragraph,*
34 *“200-year flood standard” means protection that is sufficient to*
35 *withstand flooding that has a 2-in-100 chance of occurring in any*
36 *given year, consistent with standards of the Federal Emergency*
37 *Management Agency and as may be identified by the Federal*
38 *Emergency Management Agency after January 1, 2007.*

39 (j) An evaluation of both structural and nonstructural methods
40 for reducing flood risks in currently nonurbanized areas. The

1 evaluation shall include a prioritized list of recommended actions
2 to reduce these flood risks.

3 (k) An evaluation of both structural and nonstructural methods
4 for improving public trust resources and beneficial uses of flood
5 water where these improvements also contribute to reducing flood
6 risks.

7 (l) The prioritization of recommended actions required under
8 this section shall be based on the following criteria:

9 (1) The likelihood of failure by the levee or facility.

10 (2) The current population protected by the levee or facility.

11 (3) The public safety infrastructure protected by the levee or
12 facility. For purposes of this paragraph, “public safety
13 infrastructure” ~~means the street and highway evacuation routes,~~
14 ~~hospitals, and other public safety infrastructure necessary to~~
15 ~~respond to a flood emergency; includes public safety infrastructure~~
16 *necessary to respond to a flood emergency, including, but not*
17 *limited to, street and highway evacuation routes, public utilities*
18 *necessary for public health and safety, including drinking water*
19 *and wastewater treatment facilities, and hospitals.*

20 (4) The willingness of local agencies to participate in
21 implementing the proposed action.

22 (m) Wherever feasible, the recommended actions in the plan
23 shall be designed to meet multiple objectives, including each of
24 the following:

25 (1) Reducing the risk to human life, health, and safety from
26 flooding.

27 (2) Promoting natural dynamic hydrologic and geomorphic
28 processes.

29 (3) Reducing damages from flooding.

30 (4) Increasing and improving the quantity, diversity, and
31 connectivity of riparian, wetland, flood plain, and shaded riverine
32 aquatic habitats, including agriculture and the ecological values
33 of these lands.

34 (5) Minimizing the flood management system operation and
35 maintenance requirements.

36 (6) Promoting the recovery and stability of native species
37 populations and overall biotic community diversity.

38 (n) For the purposes of preparing the plan, the department shall
39 collaborate with the United States Army Corps of Engineers and
40 the owners and operators of flood management facilities.

1 8727.5. Upon adoption of the plan by the board, all of the
2 following apply:

3 (a) The facilities identified pursuant to subdivisions (d) and (e)
4 of Section 8727 shall be deemed to be part of the system.

5 (b) The board shall take all actions necessary to remove facilities
6 identified pursuant to paragraph (2) of subdivision (h) of Section
7 8727 from the State Plan of Flood Control for the Central Valley.

8 ~~(c) The department shall prepare, and the board shall adopt, a~~
9 ~~schedule of implementation for all of the recommended actions.~~
10 ~~The schedule shall include a proposed funding plan.~~

11 8727.6. *The department shall prepare, and the board shall*
12 *adopt, at the same time as the preparation and adoption of the*
13 *Sacramento-San Joaquin River Flood Management System Plan,*
14 *a schedule of implementation for all the recommended actions.*
15 *The schedule shall include a proposed funding plan.*

16 8727.7. (a) *By January 1, 2010, the department shall develop*
17 *a cost-sharing formula, as needed, for funds made available by*
18 *the Disaster Preparedness and Flood Prevention Bond Act of 2006*
19 *(Chapter 1.699 (commencing with Section 5096.800) of Division*
20 *5 of the Public Resources Code) and the Safe Drinking Water,*
21 *Water Quality and Supply, Flood Control, River and Coastal*
22 *Protection Bond Act of 2006 (Division 43 (commencing with*
23 *Section 75001) of the Public Resources Code) for repairs or*
24 *improvements of facilities of the plan to determine the local share*
25 *of the cost of design and construction.*

26 (b) *In developing a cost-share formula, the department shall*
27 *consider the ability for local governments to pay their share of the*
28 *capital costs of the project.*

29 (c) *Prior to finalizing a cost-share formula, the department shall*
30 *conduct public meetings to consider public comments. The*
31 *department shall publish the draft cost-share formula on its*
32 *Internet Web site at least 30 days before the public meetings. To*
33 *the extent feasible, the department shall provide outreach to*
34 *disadvantaged communities to promote access and participation*
35 *in the meetings.*

36 8728. Consistent with the adoption of the Sacramento-San
37 Joaquin River Flood Management System Plan, pursuant to this
38 article, each county shall collaborate with cities within its
39 jurisdiction to develop flood emergency plans *within 24 months*

1 *of the adoption of the Sacramento-San Joaquin River Flood*
2 *Management System Plan.*

3 8728.1. Consistent with the adoption of the Sacramento-San
4 Joaquin River Flood Management System Plan, pursuant to Article
5 8 (commencing with Section 8724) of the Water Code, each city,
6 county, or city and county shall collaborate with the state and local
7 flood management agencies to provide relocation assistance or
8 other cost-effective strategies for reducing flood risk to existing
9 economically disadvantaged communities located in nonurbanized
10 areas.

11 8728.2. Consistent with the adoption of the Sacramento-San
12 Joaquin River Flood Management System Plan, pursuant to this
13 article, each city, county, or city and county shall collaborate with
14 the state and local flood management agencies to develop funding
15 mechanisms to finance local flood responsibilities *within 24 months*
16 *of the adoption of the Sacramento-San Joaquin River Flood*
17 *Management System Plan.*

18 8728.3. Notwithstanding any other provision of law, this article
19 applies to all cities, including charter cities, and counties included
20 in the plan, pursuant to Section 8727. The Legislature finds and
21 declares that flood protection in the Sacramento-San Joaquin Rivers
22 drainage is a matter of statewide concern and not a municipal affair
23 as that term is used in Section 5 of Article XI of the California
24 Constitution.

25 *SEC. 11. Section 12878.1 of the Water Code is amended to*
26 *read:*

27 12878.1. (a) Whenever the department finds that a unit of a
28 project is not being operated or maintained in accordance with the
29 standards established by federal regulations or whenever *the*
30 *department finds that a modification of a unit of a project that has*
31 *been permitted by the board and that provides flood protection is*
32 *not being operated or maintained in accordance with the*
33 *requirements established by the board or department or whenever*
34 *the governing body of a local agency obligated to operate and*
35 *maintain that unit by resolution duly adopted and filed with the*
36 *department declares that it no longer desires to operate and*
37 *maintain the unit, the department shall prepare a statement to that*
38 *effect specifying in detail the particular items of work necessary*
39 *to be done in order to comply with the standards of the federal*
40 *government and the requirements of the board or the department*

1 together with an estimate of the cost thereof for the current fiscal
2 year and for the ensuing fiscal year.

3 (b) Subject to subdivision (c), but notwithstanding any other
4 provision of law, the board or the department is not required to
5 proceed in accordance with subdivision (a) or with the formation
6 of a maintenance area under this chapter if neither the board nor
7 the department has given the nonfederal assurances to the United
8 States required for the project. If neither the board nor the
9 department has given the nonfederal assurances to the United States
10 required for the project, the board or department may elect to
11 proceed with the formation if it determines that the formation of
12 a maintenance area is in the best interest of the state.

13 (c) (1) Subdivision (b) does not apply to any project for which
14 an application for the formation of a maintenance area under this
15 chapter has been submitted to the department by a local agency
16 on or before July 1, 2003.

17 (2) Subject to paragraph (3), the department or the board shall
18 proceed in accordance with subdivision (a) and with the formation
19 of a maintenance area in accordance with this chapter for any
20 project described in paragraph (1).

21 (3) Before the department or the board forms a maintenance
22 area pursuant to this subdivision, the local agency shall enter into
23 an agreement with the department pursuant to which the local
24 agency agrees to indemnify and hold and save harmless the state,
25 its officers, agents, and employees for any and all liability for
26 damages that may arise out of the planning, design, construction,
27 operation, maintenance, repair, or rehabilitation of the project, or
28 the dissolution or modification of the maintenance area formed
29 pursuant to this subdivision.

30 ~~SEC. 11.~~

31 *SEC. 12.* If the Commission on State Mandates determines that
32 this act contains costs mandated by the state, reimbursement to
33 local agencies and school districts for those costs shall be made
34 pursuant to Part 7 (commencing with Section 17500) of Division
35 4 of Title 2 of the Government Code.